



[3411-15-P]

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596-AD38

Land Uses; Special Uses; Streamlining Processing of Communications Use Applications

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture is issuing this final rule to implement the Agriculture Improvement Act of 2018, providing for streamlining the Agency's procedures for evaluating applications to locate or modify communications facilities on National Forest System (NFS) lands.

DATES: This rule is effective [insert date of publication in the **FEDERAL REGISTER**].

ADDRESSES: Information on this final rule may be obtained via written request addressed to the Director, Lands and Realty Management, USDA Forest Service, 201 14th Street, Washington, DC 20250-1124 or by email to SM.FS.WO_LandStaff@usda.gov.

FOR FURTHER INFORMATION CONTACT: Joey Perry, Lands Staff, 707-441-3569 or joey.perry@usda.gov. Individuals who use telecommunication devices for the deaf may call the Federal Relay Service at 800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 2018, the President signed the Agriculture Improvement Act of 2018 (the Farm Bill). Title VIII, Subtitle G, section 8705, of the Farm Bill requires the Forest Service to issue regulations that streamline the Agency’s procedures for evaluating applications to locate or modify communications facilities on NFS lands.

The Forest Service is responsible for managing NFS lands that are adjacent to rural and urban areas. The Forest Service authorizes the occupancy and use of NFS lands for communications facilities (buildings, towers and ancillary improvements) and fiber optic lines, which provide critical communications services, including television, radio, cellular services, emergency services and broadband, to these areas. The Forest Service administers over 3,700 special use authorizations for communications uses at 1,530 communications sites and more than 400 communications use authorizations for fiber optic lines on NFS lands.

The Secretary of Agriculture’s Rural Prosperity Task Force Report of 2017 identified connecting rural communities across the United States as a strategic priority for USDA because “[i]n today’s information-driven global economy, e-connectivity is not simply an amenity—it has become essential.”

On January 8, 2018, the President signed Executive Order 13821, *Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America*, which states that “Americans need access to reliable, affordable broadband internet service to succeed in today’s information-driven, global economy” (83 FR 1507). The Executive Order directs Federal agencies “to use all viable tools to accelerate the deployment and adoption of affordable, reliable, modern high-speed broadband connectivity to rural America. . . .” *Id.* Agencies are encouraged to reduce barriers to capital investments, remove obstacles to broadband services, and more efficiently employ Government resources. *Id.*

Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, as amended by section 606(a), division P, Consolidated Appropriations Act, 2018, also known as the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act (MOBILE NOW Act), codified at 47 U.S.C. 1455(b)(3), requires the Forest Service within 270 days of receipt of an application for a communications facility or a communications use to grant or deny the application and to notify the applicant of the grant or denial.

Summary of Public Comments and Responses

Overview

On September 25, 2019, the Forest Service published a proposed rule implementing part of section 8705 in the **Federal Register** (84 FR 50703) with a 60-day comment period ending November 25, 2019. The Agency sought public comment on amending its regulations to implement the part of section 8705 providing for streamlining the Agency's procedures for evaluating applications to locate or modify communications facilities on NFS lands.

As discussed in the **Federal Register** notice for the proposed rule, existing Forest Service regulations at 36 CFR 251.54(g) and existing Forest Service directives in Forest Service Handbook (FSH) 2709.11, Chapter 10, already implement the provisions in sections 8705(b)(1) through (b)(3) and (c)(4) regarding procedures for evaluating and granting applications for communications uses in a uniform, standardized manner that is competitively and technologically neutral and non-discriminatory and regarding streamlining evaluation of applications for communications uses on previously disturbed NFS lands. Proposed revisions to the Forest Service's NEPA regulations at 36 CFR part 220 (84 FR 27544) would further streamline evaluation of communications use applications. In addition, the Forest Service will be publishing proposed revisions to its directives at FSH 2709.11, Chapter 90, to further implement

the streamlining provisions in section 8705. The Forest Service will publish a subsequent notice in the **Federal Register** for a proposed rule to implement section 8705(c)(3)(B), which requires regulations to implement a new programmatic administrative fee for communications use authorizations to cover the costs of administering the Forest Service's communications site program.

The Forest Service received 8 written comments on the proposed rule providing for streamlining the Agency's procedures for evaluating applications to locate or modify communications facilities on NFS lands. With one exception, all respondents supported the proposed rule. One respondent provided comments that were outside the scope of the proposed rule. Comments within the scope of the proposed rule addressed a range of topics primarily in the following areas: the communications site mapping tool, communications use application tracking system, compliance with the National Environmental Policy Act and MOBILE NOW Act, communications use application and authorization process and co-location requirements, 30-year term for communications use authorizations, processing fees, and technical requirements for communications uses.

General Comments

Respondents generally supported the Forest Service's efforts to amend its regulations to streamline the application and authorization process for locating communications facilities on NFS lands.

Comment: One respondent expressed appreciation of ongoing efforts by the Forest Service to develop an online mapping tool for communications sites on NFS lands.

Response: The Department believes the online mapping tool is an important component of the Forest Service's communications site program and will provide existing authorization

holders and future applicants with important information about areas of NFS lands that are developed and available for wireless communications uses. The map viewer was launched in October 2019 and is available at <https://www.fs.usda.gov/managing-land/special-uses/commsitemapviewer>.

Comment: Several respondents recommended that the Forest Service implement a transparent, web-based filing, tracking, monitoring, and reporting platform for applications to locate or modify communications facilities on NFS lands. One respondent suggested that this type of system would further partnerships and collaboration with the Forest Service and would establish clear expectations regarding meeting the timeframe for granting or denying a communications use application under the MOBILE NOW Act.

Response: The Department agrees that a web-based filing, tracking, monitoring, and reporting tool would help the Forest Service deliver the level of customer service that the Agency strives to provide. The Forest Service has undertaken modernization efforts of its entire special uses program, which includes communications uses. The Forest Service has implemented an e-permitting pilot for two of the less complex types of special uses. Implementation of e-permitting for communications uses is under consideration. The e-permitting portal would allow for a proponent to file a proposal and track its progress through acceptance as an application. The Forest Service is committed to developing a more robust web-based system. However, with its current program funding levels and staffing shortage, the Agency is constrained by the limited ability of its existing internal database. The Forest Service has developed an internal report for tracking the status of communications use applications and will utilize the report at all levels of the Agency to ensure the requirements of section 8705 of the Farm Bill are met.

Comment: One respondent commented on the difference between the phrase, “receipt of a duly filed application,” in the MOBILE NOW Act versus the phrase, “acceptance of a proposal as an application for a new communications facility,” in the proposed rule. The respondent expressed concern that adding the phrase, “acceptance of a proposal,” to the regulation could delay the start of processing and frustrate the congressional purpose for the processing timeline. Additionally, the respondent raised concerns about some national forests having an “open season” during which they allow special use proposals to be submitted and then determine which proposals to accept as applications. This respondent stated that in order to prevent this practice from being applied to communications use applications, the phrase “acceptance of a proposal” should be replaced with the phrase “receipt of an application.” The respondent further stated that it was unclear what is required for a proposal to be accepted as an application. The respondent stated that if the “acceptance of a proposal” language is included in the final rule, the rule should provide guidance regarding the requirements for acceptance of a proposal and the requirements for the content of an application. Another respondent suggested that the Forest Service adopt an initial timeframe for reviewing an application and advise the applicant if additional information is necessary. The respondent recommended a 30-day timeframe for that purpose.

Response: The MOBILE NOW Act requires Federal agencies within 270 days of receipt of an application for a communications facility or a communications use to grant or deny the application and notify the applicant of the grant or denial. The Department is integrating the 270-day timeframe for responding to applications for communications facilities and communications uses with the requirements in the Forest Service’s regulations and directives governing special use proposals and applications. In accordance with Forest Service regulations and directives at 36 CFR 251.54(g) and Forest Service Handbook (FSH) 2709.11, Chapter 10, section 11.22,

paragraph 1, and section 11.24, a special use proposal is not accepted as an application until it passes initial and second-level screening. The initial and second-level screening criteria are found at 36 CFR 251.54(e)(1) and (5) and FSH 2709.11, Chapter 10, sections 12.21 and 12.32. The 270-day timeframe will begin upon acceptance of an application for a proposed communications facility or proposed communications use in accordance with 36 CFR 251.54(g)(1). The 270-day timeframe is also triggered upon receipt of proposals for modifications to existing communications facilities under 36 CFR 251.61 and applications for a new authorization for existing communications facilities under 36 CFR 251.64(b). These proposals are not subject to initial and second-level screening and are immediately accepted as applications upon submission. However, these proposals must meet the requirements in FSH 2709.11, Chapter 10, section 11.2, paragraph 2.

Existing Forest Service directives at FSH 2709.11, Chapter 10, section 12.12, state that the authorized officer must, within 60 calendar days of receipt of a proposal, review the proposal and advise the proponent as to whether the Forest Service will accept the proposal as a formal application or deny the proposal based on initial or second-level screening criteria. The 60-day review period does not include periods in which the authorized officer is waiting for additional information from the proponent or a governmental entity that is needed to complete review of a proposal. The 60-day period may be extended in rare situations involving complex proposals. The Forest Service's existing regulations and directives comply with congressional intent by providing a uniform and standard process for reviewing proposals, accepting applications, and authorizing the use and occupancy of NFS lands. With certain exceptions, such as when an opportunity is competitively offered through issuance of a prospectus, the Forest Service does not condone restricting acceptance of proposals for use and occupancy of NFS lands to specified

time periods. Unless subject to these exceptions, a proposal for use and occupancy of NFS lands may be submitted at any time.

Existing Forest Service regulations at 36 CFR 251.54(a) require those proposing a use or occupancy of NFS lands, including proposed communications uses, to contact the Forest Service office responsible for management of the affected lands as early as possible. This pre-proposal meeting gives the Forest Service an opportunity to discuss the proposed use or occupancy with the proponent and any initial concerns the Agency may have or requirements the proponent should be aware of. Existing Forest Service regulations at 36 CFR 251.54(d) specify requirements and procedures for special use proposals, such as the proponent's technical and financial capability and a project description. In addition, existing Forest Service regulations at 36 CFR 251.54(e)(3) specify that for proposed uses that meet the minimum requirements, the authorized officer is required, to the extent practicable, to provide further guidance and information, such as possible land use conflicts, application procedures, applicable processing and monitoring fees, other permit or clearance requirements, environmental and management considerations, and other special conditions. Furthermore, existing Forest Service regulations at 36 CFR 251.54(g) provide direction for acceptance and processing of special use applications, including applications for communications uses.

Forest Service regulations at 36 CFR 251.58(c)(7) and Forest Service directives at FSH 2709.11, Chapter 20, section 21.11d, establish customer service standards for processing special use applications, including applications for communications facilities and uses, that are subject to processing fees. Specifically, for applications that take 50 hours or less to process and that are subject to a categorical exclusion from documentation in an environmental assessment (EA) or environmental impact statement (EIS), the Forest Service endeavors to process the

application within 60 calendar days of the date of receipt of the processing fee. If the application cannot be processed within that 60-day period, the authorized officer must notify the applicant in writing prior to the 30th calendar day of that period of the reasons for the delay and a projected date for completion of processing. For all other applications, including those that require an EA or an EIS, the authorized officer must, within 60 calendar days of acceptance of the application, notify the applicant in writing of the anticipated steps that will be needed to process the application.

Comment: Several respondents supported the standard 30-year term for communications use authorizations. Multiple respondents stressed the importance of the standard 30-year term for providing greater long-term certainty and greater incentive to invest at communications sites. One respondent requested more information on when a shorter term would be warranted. Additionally, one respondent recommended that the Forest Service also provide for automatic renewal of communications use authorizations every 10 years.

Response: The Department agrees that the standard 30-year term for communications use authorizations will provide greater long-term certainty for those constructing, operating, and maintaining communications facilities on NFS lands; may provide greater incentive to invest at communications sites on NFS lands; and may facilitate lending for improvements at communications sites on NFS lands. The standard 30-year term for communications use authorizations will also reduce the backlog of expired authorizations and workload on Forest Service personnel, since communications use authorizations will be issued less frequently.

Forest Service authorized officers will retain the authority to issue a communications use authorization for less than 30 years. These situations should be infrequent and should be based on documented case-specific circumstances that warrant a shorter term, such as when a decision

has been made to convert the area where a communications facility is located to a higher public purpose or when a communications facility or use is needed only for a limited period.

Forest Service communications use authorizations expire at the end of their term and are not renewable. To replace an expiring authorization, an application for a new authorization must be submitted in accordance with the terms and conditions of the existing authorization. Requiring submission of an application for a new authorization upon expiration provides an opportunity for the authorized officer to make a determination as to whether the use and occupancy to be authorized by the new authorization are still consistent with the standards and guidelines in the applicable land management plan, are still being utilized as originally authorized, and are being operated and maintained in accordance with all the provisions of the authorization, per existing Forest Service regulations at 36 CFR 251.64. Additionally, the authorized officer may prescribe new terms and conditions when the new authorization is issued, per 36 CFR 251.64. Having the ability to make these assessments and include new terms and conditions as needed are critical management tools for the Forest Service that strengthen the Agency's ability to effectively manage NFS lands.

Comment: One respondent requested clarification on the amount of processing fees a governmental agency must pay when applying for a special use authorization for a communications facility or a communications use.

Response: Section 8705(c)(3) of the Farm Bill requires the Department to issue regulations that include a structure of fees for submitting a communications use application based on the cost to the Forest Service of considering that type of application and issuing communications use authorizations based on the cost to the Forest Service of any maintenance or

other activities required to be performed by the Forest Service as a result of the location or modification of the communications facility.

The statutory requirements in section 8705(c)(3) are reflected in § 251.58(c) of the Forest Service's existing regulations and FSH 2709.11, Chapter 20, of the Agency's existing directives, which establish procedures for assessing processing fees to recover the Agency's costs incurred in evaluating special use applications and issuing special use authorizations, including communications use applications and authorizations. State, local, and tribal governmental entities are not exempt from paying processing and monitoring fees. As noted in 36 CFR 251.58(g), Federal agencies are exempt from cost recovery fees only if they are applying for or conducting a use or activity that is not authorized by the Federal Land Policy and Management Act (FLPMA) or the Mineral Leasing Act (MLA). Federal agency applications and authorizations for uses and activities authorized by FLPMA or the MLA are subject to processing and monitoring fees. Communications uses are authorized under FLPMA. Therefore, Federal agencies are not exempt from processing fees for communications uses.

The Forest Service will publish a subsequent notice of a proposed rule in the *Federal Register* to implement the programmatic administrative fee as required by section 8705(c)(3)(A) of the Farm Bill.

Comment: One respondent suggested that the Forest Service consider implementing a reasonable timeframe for completing documentation of a categorical exclusion for special use authorizations. Another respondent believed there were citation errors in the proposed rule for communications facilities and uses, specifically, in the citations to the expanded and new categorical exclusions for special use authorizations.

Response: The Forest Service is committed to the goals of making project decisions in a timely manner and improving or eliminating inefficient processes. The proposed new categorical exclusion for special use authorizations, to be codified at 36 CFR 220.5(d)(11), would not require a project or case file and decision memo, so the Forest Service anticipates that its review for this categorical exclusion would be conducted expeditiously to the extent permitted by the circumstances of the proposed use. Although a project or case file and decision memo are required for the proposed expanded categorical exclusion for special use authorizations, to be codified at 36 CFR 220.5(e)(3), the Agency anticipates that reviews for this categorical exclusion also typically could be conducted expeditiously to the extent permitted by the circumstances of the proposed use.

The proposed NEPA regulations would re-codify the existing categorical exclusion sections at 36 CFR 220.6(d) and (e) as 36 CFR 220.5(d) and (e). Therefore, under the proposed NEPA regulations, the new categorical exclusion under paragraph (d) would be codified at 36 CFR 220.5(d)(11), and the existing categorical exclusion at 36 CFR 220.6(e)(3) would be re-codified at 36 CFR 220.5(e)(3). The proposed rule on streamlining processing of communications use applications incorrectly cited the existing categorical exclusion for special use authorizations as 36 CFR 220.5(e)(3). The correct citation to the existing categorical exclusion is 36 CFR 220.6(e)(3).

Comment: Several respondents commented on the timeframe in the MOBILE NOW Act for the Forest Service to grant or deny an application for a communications facility or a communications use and to notify the applicant of the grant or denial. One respondent stated that the Forest Service should ensure the MOBILE NOW Act requirements are applied to applications that are pending as of the effective date of the final rule, as well as to applications

that are submitted after the effective date of the final rule. The same respondent recommended that the final rule provide that failure to meet the 270-day timeframe would result in the application being deemed granted. Additionally, the respondent suggested that the Department evaluate internal procedures to determine if a timeframe shorter than 270 days could be implemented.

Response: The Forest Service implemented the requirements of the MOBILE NOW Act on August 13, 2018, shortly after enactment of the act on March 22, 2018. Therefore, the requirements of the act have been implemented during this entire rulemaking. The Forest Service is reinforcing its directives by incorporating the MOBILE NOW Act requirements into the Agency's regulations. In implementing the MOBILE NOW Act, the Forest Service evaluated its internal procedures and determined that the full 270-day timeframe provided for in the act is reasonable and necessary to complete the requisite environmental analysis. The Forest Service anticipates meeting the 270-day timeframe. Therefore, there is no need for the final rule to specify a consequence for not meeting the timeframe.

Comment: One respondent recommended an expedited process for evaluating requests to co-locate new communications uses on or in existing communications facilities. The respondent specifically identified the Federal Communications Commission (FCC)'s 60-day requirement for processing co-location applications. One respondent opposed requiring co-location of new communications uses on or in existing communications facilities.

Response: The Forest Service defines co-location as the installation of telecommunications equipment in or on an existing communications facility or other structure. FSH 2709.11, Ch. 90, sec. 90.5. Co-location in or on an existing communications facility does not require a separate communications use authorization from the Forest Service, provided the

proposed use is consistent with the communications site management plan and compatible with all existing uses at the communications site. FSH 2709.11, Ch. 90, sec. 94.1, para. 1. Existing Forest Service directives at FSH 2709.11, Chapter 90, section 94.1, paragraph 4, give authorization holders at a communications site 30 days to provide the authorized officer with documentation that the proposed use would cause harmful interference with their communications uses. Upon completion of coordination with the Forest Service and existing authorization holders and mitigation of any concerns, the proponent may proceed with installation of equipment. The Forest Service will be publishing proposed directives for public comment that would expedite requests to co-locate communications uses in or on existing communications facilities.

The Forest Service has no plans to modify its existing directives governing when co-location is appropriate. The Forest Service's existing directives encourage, rather than require, co-location of new communications uses on or in existing communications facilities. Regardless, the Department notes that proponents should be prepared to justify the need for new communications facilities. With the advent of recent technological advancements, especially digital transition switchover, many communications facilities on NFS lands are underutilized. Existing authorization holders should make excess space on or in their communications facilities available at a competitive rate for new communications uses if they can reasonably be accommodated.

Comment: One respondent stated that the Forest Service should avoid imposing new requirements regarding intermodulation analysis and other technical issues on communications use authorization holders; should continue to rely on the FCC's and National Telecommunications and Information Administration (NTIA)'s technical rules related to

interference and other issues, as appropriate, as these agencies are best positioned to take the lead in the development and enforcement of technical rules for communications facilities; and should not create duplicative requirements that could create uncertainty for communications providers deploying services on NFS lands.

Response: The Department agrees that the FCC and NTIA have statutory and regulatory authority for spectrum management and enforcement of spectrum license or authorization requirements. However, the Forest Service has statutory and regulatory authority for managing use and occupancy of NFS lands and is responsible for ensuring compliance with laws, regulations, and directives applicable to management of those lands. For wireless communications uses, it is the Forest Service's responsibility to facilitate orderly development of communications sites in a high-quality communications environment while addressing safety and environmental concerns. These goals are accomplished by establishing management requirements in the communications use authorization and applicable communications site management plan and ensuring that all authorization holders comply with the requirements. The Forest Service will continue to exercise its authority to manage use and occupancy of NFS lands for communications uses.

Comment: A respondent recommended that the proposed rule address beam paths, specifically, how owners of communications facilities obtain authorization to keep beam paths on NFS lands clear of vegetation or structures, including when the communications use is not on NFS lands, but the beam path crosses NFS lands.

Response: The Department recognizes the importance of maintaining beam paths. Routine trimming or minimal vegetation removal for beam path maintenance associated with communications uses on NFS lands is considered routine maintenance, which may be authorized

under the corresponding communications use authorization. Routine vegetation management to maintain beam paths that cross NFS lands for communications uses off NFS lands would require a separate special use authorization.

Comment: One respondent suggested that the Forest Service engage with all stakeholders at a communications site before implementing a new or modified communications site management plan for the site. The respondent also recommended that the Agency implement a 30-day period for stakeholders to review a new or modified communications site management plan for the site.

Response: The Department does not believe that the Forest Service should engage with all users at a communications site before implementing a new or modified communications site management plan for the site. It is the responsibility of authorization holders at a communications site to ensure their occupants' comments or concerns are brought to the attention of the Forest Service. The Forest Service has no legal relationship with the occupants co-located in or on communications facilities that are owned by private or other governmental entities. The Department believes that the Forest Service should engage with existing authorization holders at a communications site when developing a new communications site management plan or modifying an existing communications site management plan that would change how the site is managed. The Forest Service will consider comments and concerns from users co-located in or on communications facilities that are owned by private or other governmental entities that are submitted through an authorization holder at the site regarding development of a new communications site management plan or modification of an existing communications site management plan that would change how the site is managed. The Department agrees that the Forest Service should provide for a 30-day period for authorization

holders at a communications site to review a new communications site management plan or modified communications site management plan that would change how the site is managed. Communications site management plans are an important component of a communications use authorization. They promote effective administration of the communications site by delineating the types of uses that are appropriate for the site and the technical and administrative requirements for management of the site. In addition, communications site management plans provide direction for day-to-day operations, including requirements for new construction, modification of existing facilities, equipment standards, special environmental considerations, and access. Although it has been standard Forest Service practice to coordinate the development of new communications site management plans with existing authorization holders at the site, Forest Service directives do not address this practice. The Forest Service will be publishing proposed directives for public comment that would require the authorized officer to give existing authorization holders at a communications site 30 days to review new communications site management plans and modifications to existing communications site management plans that would change how the site is managed. Communications use authorization holders remain responsible for coordinating the requirements of the applicable communications site management plan with occupants in or on their communications facilities.

Regulatory Certifications

Executive Order 12866

Executive Order (EO) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this final rule is not significant.

Executive Order 13771

This final rule has been reviewed in accordance with EO 13771 on reducing regulation and controlling regulatory costs and has been designated as an “other action” for purposes of the EO.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has designated this final rule as not a major rule as defined by 5 U.S.C. 804(2).

National Environmental Policy Act

The final rule will establish procedures for streamlining the Forest Service’s evaluation of applications to locate or modify communications facilities on NFS lands. Agency regulations at 36 CFR 220.6(d)(2) (73 FR 43093) exclude from documentation in an environmental assessment or environmental impact statement “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.” The Department has concluded that this final rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an EA or EIS.

Regulatory Flexibility Act Analysis

The Department has considered the final rule under the requirements of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This final rule will not have any direct effect on small entities as defined by the Regulatory Flexibility Act. The final rule will not impose recordkeeping requirements on small entities; will not affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

Federalism

The Department has considered the final rule under the requirements of EO 13132, *Federalism*. The Department has determined that the final rule conforms with the federalism principles set out in this executive order; will not impose any compliance costs on the states; and will not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has concluded that the final rule does not have Federalism implications.

Consultation with Tribal Governments

The Department has determined that national tribal consultation is not necessary for the final rule. The final rule, which updates the Forest Service's administrative procedures for reviewing applications and issuing authorizations for communications uses, is programmatic and does not have any direct effects on tribes. Tribal consultation will occur as appropriate in

connection with specific applications for communications facilities and communications uses on NFS lands.

No Takings Implications

The Department has analyzed the final rule in accordance with the principles and criteria in EO 12630, *Governmental Actions and Interference with Constitutionally Protect Property Rights*. The Department has determined that the final rule will not pose the risk of a taking of private property.

Energy Effects

The Department has reviewed the final rule under EO 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. The Department has determined that the final rule will not constitute a significant energy action as defined in EO 13211.

Civil Justice Reform

The Department has analyzed the final rule in accordance with the principles and criteria in EO 12988, *Civil Justice Reform*. Upon publication of the final rule, (1) all state and local laws and regulations that conflict with the final rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), signed into law on March 22, 1995, the Department has assessed the effects of the final rule on state, local, and tribal governments and the private sector. The final rule will not compel the expenditure of \$100 million or more by any state, local, or tribal government or anyone in the

private sector. Therefore, a statement under section 202 of the Act is not required.

Controlling Paperwork Burdens on the Public

The final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 251

Electric power, Mineral resources, National forests, Rights-of-way, and Water resources.

Therefore, for the reasons set forth in the preamble, the Forest Service is amending part 251, subpart B, of title 36 of the Code of Federal Regulations as follows:

PART 251—LAND USES

Subpart B—Special Uses

1. The authority citation for part 251, subpart B, continues to read:

Authority: 16 U.S.C. 460l-6a, 460l-6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761-1771.

2. In § 251.54, revise paragraphs (g)(4) and (5) to read as follows:

§ 251.54 Proposal and application requirements and procedures.

* * * * *

(g) * * *

(4) *Response to all other applications*—(i) *General*. Based on evaluation of the information provided by the applicant and other relevant information such as environmental findings, the authorized officer shall decide whether to approve the proposed use, approve the

proposed use with modifications, or deny the proposed use. A group of applications for similar uses may be evaluated with one analysis and approved in one decision.

(ii) *Communications use applications.* Within 270 days of acceptance of a proposal as an application for a new communications facility or co-location of a new communications use in or on a facility managed by the Forest Service, or within 270 days of receipt of an application for modification of an existing communications facility or co-located communications use on a facility managed by the Forest Service, the authorized officer shall grant or deny the application and notify the applicant in writing of the grant or denial.

(iii) *Tracking of communications use applications.* The Forest Service shall establish a process in its directive system (36 CFR 200.4) for tracking applications for communications uses that provides for:

- (A) Identifying the number of applications received, approved, and denied;
- (B) For applications that are denied, describing the reasons for denial; and
- (C) Describing the amount of time between receipt of an application and grant or denial of the application.

(5) *Authorization of a special use*—(i) *General.* Upon a decision to approve a special use or a group of similar uses, the authorized officer may issue one or more special use authorizations as defined in §251.51 of this subpart.

(ii) *Minimum term for communications use authorizations.* The term for a communications use authorization shall be 30 years, unless case-specific circumstances warrant a shorter term.

James E. Hubbard,
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Natural Resources and Environment.

[FR Doc. 2020-07280 Filed: 4/7/2020 8:45 am; Publication Date: 4/8/2020]